

# Customs Bulletin

Regulations, Rulings, Decisions, and Notices  
concerning Customs and related matters



## and Decisions

of the United States Court of Customs and  
Patent Appeals and the United States  
Customs Court

Vol. 12

SEPTEMBER 27, 1978

No. 39

*This issue contains*

T.D. 78-306 through 78-308

General Notice

C.D. 4763

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THE DEPARTMENT OF THE TREASURY  
U.S. Customs Service

### **NOTICE**

The abstracts, rulings, and notices which are issued weekly by the U.S. Customs Service are subject to correction for typographical or other printing errors. Users may notify the U.S. Customs Service, Logistics Management Division, Washington, D.C. 20229, of any such errors in order that corrections may be made before the bound volumes are published.

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# U.S. Customs Service

## *Treasury Decisions*

(T.D. 78-306)

### Foreign Currencies—Certification of Rates

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified the following rates of exchange which varied by 5 per centum or more from the quarterly rate published in T.D. 78-237 for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

#### Japan yen:

August 22, 1978.....	\$0. 005227
August 23, 1978.....	. 005211
August 24, 1978.....	. 005235
August 25, 1978.....	. 005193

#### Spain peseta:

August 21, 1978.....	\$0. 013380
August 22, 1978.....	. 013484
August 23, 1978.....	. 013437
August 24, 1978.....	. 013470
August 25, 1978.....	. 013461

#### Switzerland franc:

August 21, 1978.....	\$0. 5995
August 22, 1978.....	. 6005
August 23, 1978.....	. 5995
August 24, 1978.....	. 6029½
August 25, 1978.....	. 5948½

(LIQ-3-O:D:S)

Date: September 1, 1978.

BEN L. IRVIN,  
*Acting Director,*  
*Duty Assessment Division.*

(T.D. 78-307)

## Foreign Currencies—Daily Rates for Countries not on Quarterly List

Rates of exchange certified to the Secretary of the Treasury by the Federal Reserve Bank of New York for the Hong Kong dollar, Iran rial, People's Republic of China yuan, Philippines peso, Singapore dollar, Thailand baht (tical)

The Federal Reserve Bank of New York, pursuant to section 522(c), Tariff Act of 1930, as amended (31 U.S.C. 372(c)), has certified buying rates in U.S. dollars for the dates and foreign currencies shown below. These rates of exchange are published for the information and use of Customs officers and others concerned pursuant to part 159, subpart C, Customs Regulations (19 CFR 159, subpart C).

## People's Republic of China yuan:

August 21, 1978.....	\$0. 5905
August 22, 1978.....	. 5904½
August 23, 1978.....	. 5886¾
August 24, 1978.....	. 5863
August 25, 1978.....	. 5863

## Hong Kong dollar:

August 21, 1978.....	\$0. 2133½
August 22, 1978.....	. 2131
August 23, 1978.....	. 2129
August 24, 1978.....	. 2122
August 25, 1978.....	. 2123½

## Iran rial:

August 21-25, 1978.....	\$0. 0141¾
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## Philippines peso:

August 21-25, 1978.....	\$0. 1362
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## Singapore dollar:

August 21, 1978.....	\$0. 4403
August 22, 1978.....	. 4415
August 23, 1978.....	. 4400
August 24, 1978.....	. 4423
August 25, 1978.....	. 4421

## Thailand baht (tical):

August 21-25, 1978.....	\$0. 0494
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(LIQ-3-O:D:S)

Date: September 1, 1978.

BEN L. IRVIN,  
*Acting Director,*  
*Duty Assessment Division.*

(T.D. 78-308)

(19 CFR PART 111)

## CUSTOMHOUSE BROKERS

## Change of Policy Relating to Brokers' Charges for Incidental Services

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Change of policy.

SUMMARY: This document changes Customs policy with regard to the results of a failure by a customhouse broker to provide a client an itemized accounting of the cost of any incidental service the broker may arrange for the client. Formerly, any variance between the amounts actually expended for these items and the broker's statement to his client, not fully explained both on the statement and in records required to be maintained for Customs inspection and audit, was considered to be an improper withholding from the client of information relating to Customs business and a failure to keep complete records. Under the policy change, Customs will inquire only into the reasonableness of the charges and then only in cases in which the charges are not itemized on the broker's statement to the client or are not itemized in writing to the client before the charges are incurred. The policy change is made to recognize that a mere failure to itemize should not of itself be a violation of any obligation owed by the broker to his client under the Customs Regulations. The policy change nonetheless continues to protect importers against unreasonable billings for these incidental services.

EFFECTIVE DATE: September 15, 1978

FOR FURTHER INFORMATION CONTACT: Edward B. Gable, Jr., Entry Procedures and Penalties Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229; 202-566-5578.

## SUPPLEMENTARY INFORMATION:

## BACKGROUND

A "customhouse broker" is licensed by the Customs Service to transact Customs business on behalf of his clients. The Customs Service is authorized by section 641, Tariff Act of 1930, as amended (19 U.S.C. 1641), and part 111, Customs Regulations (19 CFR, pt. 111), to license brokers and supervise their activities.

A broker's bill to his client often includes charges for "incidental services", such as freight, storage, cartage, cooperage, dock and messenger service, insurance, or bonds, which are arranged by the broker on behalf of his client. These incidental services are in addition to the primary Customs-related function of entry documentation performed by brokers for their clients.

T.D. 49868

Under T.D. 49868 dated May 19, 1939, the records maintained by brokers for Customs inspection and audit are required to set forth the actual amounts expended by the broker for the incidental items referred to above. That Treasury decision provides that any variance between the amounts actually expended for these items and the broker's statement to his client, which is not explained fully both on the statement to the client and the records required to be maintained for Customs, constitutes an improper withholding from the client of information relating to Customs business (see sec. 111.39(a), Customs Regulations; 19 CFR 111.39(a)) and a failure to keep complete records (see secs. 111.21 and 111.22, Customs Regulations; 19 CFR 111.21, 111.22; T.D. 78-138, T.D. 78-257).

#### REASONS FOR CHANGE IN POLICY

Customs has determined that a policy change is necessary because a mere failure of a broker to itemize incidental service charges for his client should not of itself be a violation of any obligation owed by a broker to his client under the Customs Regulations. This policy change nonetheless will continue to protect importers against unreasonable billings for these incidental services.

Accordingly, Customs will continue to require that brokers maintain, available as part of their records of Customs transactions for Customs inspection and audit, an itemized accounting of the costs incurred by them for incidental services. However, Customs now will make only limited inquiries into the reasonableness of the charges brokers bill clients and then only in cases in which:

1. The difference between the cost of an incidental service to the broker and the amount billed to the client has not been identified (itemized) separately on billings to the client, or
2. The client has not been provided, in advance of importation, with a written itemized quotation of the charges for the incidental services, following which the client has authorized the broker to handle the importation.

If a difference between the cost to the broker and the amount billed to the client is not identified on the billing, or if the client has not received a prior written quotation itemizing the costs of the service, Customs auditors will determine if the charge is reasonable according to the billing practices of the particular broker for that service.

If a broker is unable to justify to Customs auditors substantial or unreasonable differences in billings between clients, based on normal, accepted business practices, such as volume discounts, special circumstances, or the like, the district director of Customs will advise the broker of the apparent discrepancy and recommend an appropriate change. The broker, of course, will be given an opportunity to justify his charges to the district director.

## CHANGE OF POLICY

Customhouse brokers shall continue to maintain for Customs inspection records of the costs incurred by them for "incidental services," such as freight, storage, cartage, cooperage, dock and messenger service, insurance, or bonds, arranged by the brokers for their clients, for which the brokers bill the clients.

In cases where the difference between the cost of an incidental service (see sec. 111.22(d), Customs Regulations) to the broker and the amount billed to the client has been identified separately on billings to the client, Customs shall not inquire into the reasonableness of the difference. Nor shall Customs inquire into the reasonableness of a broker's charge for an incidental service when the client has been provided with a written quotation of the charge and thereafter authorizes the broker to handle the importation.

However, when the difference has not been identified separately on billings to the client, or when the incidental service charge has not been quoted in writing to the client previous to importation, Customs auditors shall verify whether the difference is reasonable according to the billing practices of that particular broker; that is, Customs auditors shall examine the broker's records to determine whether the billings to one client for the service vary substantially from billings to other clients for the same service.

Where the broker cannot justify substantial differences between billings to one client and the rest of his clients on the basis of discounts for volume of business, special circumstances, or the like, the district director shall advise the broker of his findings and recommend an appropriate change. Upon request, the district director shall afford the broker an opportunity to justify his charge.

## AUTHORITY

This policy change is made under the authority of R.S. 251 (19 U.S.C. 66), section 624, 46 Stat. 759 (19 U.S.C. 1624), section 641, 46 Stat. 759, as amended (19 U.S.C. 1641), 77A Stat. 14 (19 U.S.C. 1202 (general headnote 11)), and 5 U.S.C. 301.

## DRAFTING INFORMATION

The principal author of this document was Todd J. Schneider, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other Customs offices participated in its development.

R. E. CHASEN,  
*Commissioner of Customs.*

[Published in the Federal Register, Sept. 15, 1978 (F.R. 41192)]

## Recent Unpublished Customs Service Decisions

The following listing of recent administrative decisions issued by the Office of Regulations and Rulings, U.S. Customs Service, and not otherwise published, is published for the information of Customs Officers and the importing community. Although the decisions are not of sufficient general interest to warrant publications as Treasury decisions, the listing describes the issues involved and is intended to aid Customs officers and concerned members of the public in identifying matters of interest which recently have been considered by the Office of Regulations and Rulings.

A copy of any decision included in this listing, identified by its date and file number, may be obtained in a form appropriate for public distribution upon written request to the Office of Regulations and Rulings, Attention: Legal Reference Area, Room 2404, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229. These copies will be made available at a cost to the requester of 10 cents per page. However, the Customs Service will waive this charge if the total number of pages copied is 10 or less.

Dated: September 12, 1978.

LEONARD LEHMAN,  
*Assistant Commissioner,  
Regulations and Rulings.*

Date of decision	File No.	Issue
7-14-78	103487	Carrier control: Applicability of 46 U.S.C. 289 to foreign flag vessel's cruise itineraries
7-26-78	103515	Carrier control: Publication by Customs Service of a proposed rule change in the Federal Register regarding the dutiability of vessel repairs and equipment purchases effected in the Panama Canal Zone
8-2-78	103528	Carrier control: Yacht used to entertain business guests for the sole purpose of promoting good will or increased business not considered as being used in the coastwise trade
8-11-78	103581	Carrier control: Foreign repairs to vessel's rudder necessitated by wear and tear rather than by a casualty are dutiable; previous repairs lasting 4 years cannot be termed ineffective
8-2-78	103587	Carrier control: Foreign-flag vessel to be used exclusively as a research vessel in U.S. waters not considered as being used in the coastwise trade
8-16-78	306127	Entry: Liability of importer for additional duties even though entry was previously liquidated
8-15-78	306240	Entry: Importation of alcoholic beverages in violation of state laws



Date of decision	File No.	Issue
8-22-78	709160	Prohibited and restricted importations: Mao Tse-Tung's Little Red Book not restricted by "manufacturing clause" of copyright law
8-17-78	709362	Prohibited and restricted importations: "Play-Bingo" tickets as a form of lottery tickets; interpretation of the term "lottery"
8-15-78	709367	Prohibited and restricted importations: acupuncture kits must satisfy FDA requirements
8-16-78	049633	Classification: Electric powered coffee mill; hydraulic hand pump with ram and cutting tools
8-10-78	052158	Classification: Inflatable plastic replica of "Goodyear" blimp
8-14-78	054735	Valuation: Overrun shoes subject to appraisement on ASP basis
8-15-78	054989	Classification: Leather and nylon baseball batting gloves
8-7-78	055125	Classification: "Butt Stompin'" ashtray
8-11-78	055127	Classification: Battery-operated "Great American Con Machine"
8-15-78	055128	Classification: Molybdenum disilicide wire
8-14-78	055174	Classification: Jurisdiction of Customs Service to review tariff classification matters which are pending before the U.S. Customs Court
8-10-78	056122	Classification: Separator, fiber mill, and filter press used in recycling plants
8-15-78	056486	Classification: Footwear with rubber or plastic soles and fabric uppers; ASP
8-17-78	056510	Classification: Latex insoles
8-10-78	056531	Classification: Pneumatic and mechanical propulsion control system; brake discs and calipers
8-16-78	056620	Classification: Bar mandrel for tube drawing
8-15-78	056709	Classification: Mechanical pencil mechanism and point
8-15-78	056765	Classification: Plastic bags
8-17-78	056800	Classification: Friction clutch
8-15-78	056840	Classification: Blind and pop rivet component and a rivet nut
8-16-78	056843	Classification: Mink paw plate
7-13-78	056870	Classification: Tapered steel tubes
7-18-78	056872	Duty assessment: Dutiability of reimported merchandise; definition of exportation and importation
8-15-78	056877	Classification: Various cable strippers and wire strippers; circuit board holders; desoldering tool; extractor inserter
8-17-78	056879	Classification: Ribbon solder by component material of chief weight
8-17-78	056904	Classification: Rapid transit equipment
8-11-78	056939	Classification: Various sizes of seamed stainless steel tubing; additional duties for chromium and molybdenum content
7-13-78	056947	Classification: Galvanized steel tension bars

Date of decision	File No.	Issue
8-6-78	056998	Classification: Penlight and pocket torch flashlights; various sized batteries
8-15-78	057000	Classification: Non-daltonite platinate coated titanium anodes
8-17-78	057020	Classification: Controllable pitch propeller; bow thruster
8-9-78	057023	Classification: Acrylic sheets
8-17-78	057034	Classification: Refrigerators to be installed in mobile homes and recreational vehicles
8-17-78	057042	Classification: Fiberglass reinforced plastic underground storage tanks for petroleum products
9-17-78	057061	Classification: Radial drill and vertical machining center which incorporates a numerical control unit
8-15-78	057067	Classification: Roller skate boot
8-15-78	057070	Classification: Aluminum heater/coolers for extruder or die barrels
8-11-78	057071	Classification: Vinyl shopping bag
8-17-78	057081	Classification: Metal underhood lamp used to light up engine of a car when the hood is raised
8-17-78	(x056539) 057109	Classification: Plastic sleeves and reduction adapter which join two or more laboratory test tubes
8-15-78	057127	Country or origin marking: Substantial transformation of various footwear components
8-17-78	057128	Classification: Aircraft seats
7-17-78	058218	Classification: "Mr. Putty", a silicone compound
7-28-78	058272	Classification: "Telecoster", a device which calculates a telephone conversation billing time
8-4-78	058392	Classification: PVS 100 paging terminal, a solid-state micro computer controlled system
6-30-78	058393	Duty Assessment: Effect of Presidential Proclamation 4561 upon certain transceivers of Jamaican manufacture
7-10-78	058406	Entry: Whether American-made stained glass sent to Canada for bending and returned is "imported"
8-4-78	058427	Classification: Respirometer—a device which measures inspiratory and expiratory volumes

The Following Decisions were Inadvertently Omitted from the List of Unpublished Decisions Contained in the CUSTOMS BULLETIN of July 5, 1978 (Vol. 12, No. 27):

5-30-78	208863	Foreign trade zones—roller skate boots subject to quota
5-12-78	208892	Bonds: inclusion of name of organization represented by principal
5-26-78	209047	Temporary importations under bond: vehicle, engine, and related articles for development of Stirling engine
6-2-78	305167	Examination and sampling of wool: expense of coring
5-11-78	305576	Entry of firearms previously taken abroad by returning servicemen
5-26-78	305840	Importation of hammocks for GSP purposes
5-9-78	305931	Dutiable status of sugar on ships delayed by engine trouble

Date of decision	File No.	Issue
6-1-78	305936	Timeliness of protest
6-1-78	305959	Duty rate for imported distilled spirits
5-26-78	305961	General requirements for importation of merchandise
6-2-78	305972	Duty-free informal entry procedures for United States research equipment
5-26-78	305999	Entry procedures: mail importations; samples under bond; printed matter
5-26-78	707895	Country of origin marking: small stainless steel shackles
6-2-78	708879	Restricted merchandise: switchblade knives
5-31-78	708979	Country of origin marking: shirts, trousers, towels, towels in rolls, and wipe rags
5-26-78	709005	Country of origin marking: lock handle and matched keys
5-31-78	709019	Country of origin marking: labels
5-26-78	709039	Importation of works of art and antiques
5-26-78	709040	Country of origin marking: steel blank flanges
5-26-78	709102	Copyright: importation of Spanish-language books
6-5-78	709103	Restricted merchandise: book, <i>Farewell America</i>

## *General Notice*

(541805/520715)

(19 CFR PART 177)

Notice of Proposed Change of Position Relating to the Dutiable Status of  
"Pirated" or "Stolen" Research and Development Costs

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Proposed change of position.

SUMMARY: This document gives notice that the Customs Service is considering changing its present position of not including "pirated" or "stolen" research and development costs as part of the dutiable value of imported merchandise. This change in position is being considered because the current position of the Customs Service appears to conflict with the principles announced in Customs Court decisions and with the practice of including "assists" as part of the dutiable value of the merchandise.

DATES: Comments must be received on or before: November 14, 1978.

ADDRESS: Comments should be addressed to the Commissioner of Customs, Attention: Regulations and Legal Publications Division, 1301 Constitution Avenue NW., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Thomas L. Lobred, Classification and Value Division, U.S. Customs Service, 1301 Constitution Avenue NW., Washington D.C. 20229; 202-566-2983.

### SUPPLEMENTARY INFORMATION:

#### BACKGROUND

It has been the position of the Customs Service not to include "pirated" or "stolen" research and development (R. & D.) costs as part of the dutiable value of imported merchandise, because the "pirate-company" (the producer of the merchandise using the "pirated" or "stolen" R. & D.) does not incur actual R. & D. costs in producing the merchandise. However, "assists," such as molds or R. & D. costs, are uniformly dutiable if otherwise provided to the producer in the normal course of business. In this context, the term "assists" is used to describe anything of value acquired by or furnished to a foreign manufacturer, producer, or assembler at less than its full cost or value for use in the production, manufacture, or assembly of the imported merchandise. See T.D. 77-297.

The U.S. Customs Court, in *Ford Motor Company v. United States*, 29 Cust. Ct. 553 (1952), stated that the purpose of the applicable

section of the value law is to derive "not the manufacturer's actual cost, but the actual cost of manufacture" when determining the cost of production of imported merchandise. A similar rule was made applicable to constructed value determinations by the Customs Court in *Goodrich-Gulf Chemicals Inc. v. United States*, 66 Cust. Ct. 509 (1970). In view of these decisions and the Customs position that R. & D. costs are dutiable as "assists," Customs believes that the origin of an "assist" should not be considered in determining dutiable value. "Pirated" or "stolen" R. & D. costs which are necessary for the production of the merchandise should be considered dutiable "assists." Information concerning a process or idea which has become part of the public domain, however is not included in determining dutiable value, because the information is freely available to anyone without incurring R. & D. costs.

#### PROPOSED CHANGE OF POSITION

The Customs Service is considering a change in its position of not including "pirated" or "stolen" R. & D. costs as part of the dutiable value of imported merchandise. The Customs Service proposes that "pirated" or "stolen" R. & D. costs be considered dutiable "assists" to be included as part of the dutiable value of imported merchandise.

#### AUTHORITY

This notice is published in accordance with section 177.10(c)(2) of the Customs Regulations (19 CFR 177.10(c)(2)).

#### COMMENTS

Pursuant to section 177.10(c)(1) of the Customs Regulations (19 CFR 177.10(c)(1)), the Customs Service invites written comments (preferably in triplicate) on this proposed change from all interested parties.

All comments received in response to this notice will be available for public inspection in accordance with section 103.8(b) of the Customs Regulations (19 CFR 103.8(b)) during regular business hours at the Regulations and Legal Publications Division, Headquarters, U.S. Customs Service, 1301 Constitution Avenue NW., Washington, D.C. 20229.

#### DRAFTING INFORMATION

The principal author of this notice was Carmen D. Hawkins, Regulations and Legal Publications Division, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices of the Customs Service participated in its development.

Dated: September 11, 1978.

LEONARD LEHMAN,  
Assistant Commissioner,  
Regulations and Rulings.

# Decisions of the United States Customs Court

United States Customs Court

One Federal Plaza  
New York, N.Y. 10007

*Chief Judge*

Edward D. Re

*Judges*

Paul P. Rao  
Morgan Ford  
Scovel Richardson  
Frederick Landis

James L. Watson  
Herbert N. Maletz  
Bernard Newman  
Nils A. Boe

*Senior Judge*

Samuel M. Rosenstein

*Clerk*

Joseph E. Lombardi

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## *Customs Decisions*

(C.D. 4763)

PISTORINO & Co., INC. v. UNITED STATES

*Models—Charts*

Merchandise invoiced as "Acupuncture Dolls (Models)" held properly classified by Customs as other models under item 737.15 of the tariff schedules, rather than as charts under item 273.35, as claimed by plaintiff.

Court No. 73-12-03391

Port of Boston

[Judgment for defendant.]

(Decided August 29, 1978)

*Doherty & Melahn (Walter E. Doherty, Jr., of counsel) for the plaintiff.*

*Barbara Allen Babcock, Assistant Attorney General (Edmund F. Schmidt, trial attorney), for the defendant.*

MALETZ, Judge: This case involves the proper tariff classification of merchandise invoiced as "Acupuncture Dolls (Models)" which were manufactured in and exported from the People's Republic of China and entered at the port of Boston in January 1973. Plaintiff Pistorino & Co., Inc. was the customs broker and the consignee was Sobin Chemicals, Inc.<sup>1</sup>

The importation consists of a kit containing a three dimensional scaled-down twenty-inch figure of a human male; a replica of a human hand also scaled down in size; a replica of a human ear; and a 36-page manual. The kit is imported in a cardboard box upon which is printed the following: "MODEL OF A HUMAN BODY SHOWING CHINESE ACUPUNCTURE POINTS AND THE COURSES OF MERIDIANS." The figure, hand and ear are crafted in soft vinyl with 361 acupuncture points and 14 longitudinal lines or meridians marked in bright colors. The acupuncture points are further identified with arabic numerals which are keyed to the 36-page manual.

The imported merchandise was classified by the government under item 737.15 of the Tariff Schedules of the United States (TSUS), as other models and assessed duty of 70% ad valorem—the column 2 rate for products of Communist countries. Plaintiff claims that the imported merchandise consists of "charts" within the meaning of TSUS and the proper classification should, therefore, be under item 273.35 which is a duty-free provision.

The pertinent provisions of TSUS read as follows:

*Classified under:*

*Schedule 7, Part 5, Subpart E:*

Model trains, model airplanes, model boats, and other model articles, all the foregoing whether or not toys; and con- struction kits or sets for making or as- sembling such model articles:	Col 2
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\* \* \* \* \*

Other models, and construction kits or  
sets:

\* \* \* \* \*

737.15	Other-----	70% ad val.
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*Claimed under:*

*Schedule 2, Part 5:*

*Part 5 headnotes:*

1. Except for decalcomanias, labels, flaps, and bands, all of which are covered by the provisions therefore in this part, regardless of the nature of the printing thereon, this part covers only printed

<sup>1</sup> Sobin Chemicals, Inc. is now a division of International Minerals & Chemical Corporation;

matter consisting essentially of textual or pictorial matter produced by any printing process, and similar matter in manuscript or typewritten form. The text may be set forth in any language by means of any kind of characters. With the exceptions above indicated, this part does not cover any article in which printing is merely incidental to the primary use of the article or in which printing is employed mainly for coloration or to produce a decorative or novelty effect (see part 4 of this schedule).

\*  
273.35

\*      \*      \*      \*      \*      \*      \*  
Maps, atlases, and charts (except tourist  
and other literature provided for in item  
270.70) -----

Free

Against this background, plaintiff contends that the importation is not classifiable as a model but rather is more than a model. It further contends that the tariff provision for models is limited to inanimate objects and does not include animate figures such as those in issue. And finally, according to plaintiff, the importation is within the common meaning of the word "chart." Defendant, on the other hand, maintains that the importation falls within the common meaning of the word "model."

# I

The record consists of the testimony of three witnesses for the plaintiff, seven plaintiff exhibits, the testimony of two witnesses for the defendant and 14 defendant exhibits.<sup>2</sup>

The record shows that in 1972 Mr. Sobin purchased the importations in Canton, China for Sobin Chemicals, Inc. These importations (which in his testimony Mr. Sobin referred to as "acupuncture manikins" and as "models") were used in teaching acupuncture to students; in determinations by surgeons and anesthetists as to where acupuncture needles should be inserted to anesthetize the patient;

<sup>2</sup>The witnesses for plaintiff were: (1) Julian M. Sobin, who at the time of importation was president of the consignee, Sobin Chemicals, Inc. of Boston, Mass., a firm which imported chemicals and allied products from all over the world; (2) Dr. Tsu-Liang Hsu, a thoracic surgeon who received his medical degree and acupuncture experience in Taiwan; and (3) Terry Hardy, an employee in the retail sales division of J. L. Hammett Company, an educational supply firm which sells maps, medical charts, globes and graphs to grade schools, high schools and colleges, but not to professional schools such as medical schools.

The witnesses for the defendant were: (1) Jerome Glickman, director of the Educational Media Support Center at the Boston University School of Medicine, who was employed as a medical illustrator and whose doctoral thesis was on the effectiveness of individual three-dimensional models in teaching biology and anatomy; and (2) Dr. William McNary, an associate professor of anatomy at the Boston University School of Medicine.



and in acupuncture clinics to inform patients where and how acupuncture needles were to be inserted.<sup>3</sup>

The record further shows that about 10,000 kits were imported by Sobin Chemicals, of which some 1,500 were sold by it principally to doctors and researchers in the field of acupuncture. Sobin Chemicals never sold the kits to the general public, although it advertised them in the medical edition of Time magazine in September 1973. Stanley Marcus, of Neiman-Marcus Company of Dallas, Texas, also imported about 200 of these kits which were offered to regular Neiman-Marcus customers at \$90.00 per kit for gift purposes; however, only 43 were sold.

It is to be observed that the record is replete with exhibits and testimony which consistently refer to the imported figures in the kits as "models" and the kits as "model kits." Indeed, plaintiff's witnesses themselves, in the course of their testimony, frequently referred to the imported figures as "models."

It is in this setting that we consider the testimony of plaintiff's expert witness, Terry Hardy, who, as previously indicated, was employed in the retail sales division of J. L. Hammett Company, an educational supply firm. The witness had some experience in selling topographical maps, medical charts, and globes. According to the witness, the imported figures—though three-dimensional—were "charts." The basis of his opinion was that the article "reminds me of looking like a chart because of the lines that accompany it." (R. 98) The witness further testified that in his opinion the imported figures would be models save for the lines or meridians appearing thereon. It is to be added that the catalogue of the witness' company, the J. L. Hammett Company, designates all three-dimensional structures contained therein as "models" and all flat two-dimensional figures as "charts." In this connection, Mr. Hardy's attention was directed to a figure listed in the Hammett company catalogue as a "Torso Model." He testified that the fact that this figure came with an accompanying 56-page manual did not preclude it from being a "model" because, in his words, "[i]t's not made as a chart, it's not sold as a chart." (R. 86) Finally, in Mr. Hardy's opinion, the longitudinal lines or meridians and points were placed on the figures here in issue by a printing process, although Mr. Hardy conceded he had no actual knowledge of the process used.

<sup>3</sup> According to the record, acupuncture is the treatment of disease by inserting very fine needles into the body at specific points called loci. In 1958 or 1959 acupuncture was used to produce analgesia for surgical operations and since that time it is reported that thousands of major operations have been performed with the use of acupuncture with patients remaining conscious, yet insensitive to pain throughout the operative procedure. Acupuncture points and meridians are not visible on the human body, although they have a certain reality to them. While they do not follow arteries and veins in the body, they do have a relationship to the nerves of the body. The points guide the acupuncturist as to where acupuncture needles are to be inserted in a patient in order to affect the proper nerves for the purpose intended.

Defendant's first expert witness, Jerome Glickman, who, as previously mentioned, was director of the Educational Media Support Center at the Boston University School of Medicine, testified that he used various models as teaching and reference sources and that in his experience anatomical models (such as those of the heart or brain) are "models" even though they might contain anatomical numbering and labeling, etc., none of which are found in nature.

He defined the term "model" in the following way (R. 110):

\* \* \* a model \* \* \* is defined as a three-dimensional object that represents a physical object that may or may not be present; that the surface and form of that model should be similar to the original but its dimensions and composition of the material may differ.

He defined a chart as (R. 110):

\* \* \* a two-dimensional display prepared on a flat surface to display the anatomy. It has no dimensional quality to it except as created by the artist in rendering form.

In Mr. Glickman's opinion, the imported articles are "models." He testified that anatomical models often have lines on them and that the presence of lines in no wise precludes the articles from being models. He further stated that the lines on the figures were hand drawn as evidenced by the visual presence of brush marks and the thickening and thinning of the lines—all of which, he indicated, are characteristic of hand application.

On cross-examination, Mr. Glickman was questioned repeatedly on whether a chart is used to "chart something traveling from one place to another." (R. 126) In this regard he noted that the flow of blood, for example, can be understood by referring to either a chart or a model. The witness stated that a model can be used for the same purposes as a chart but that such use does not make a model a chart because "we are talking about two different things." (R. 127)

Mr. Glickman went on to testify that he had seen so-called three-dimensional "charts." These, however, were partially three-dimensional in that they had flat surfaces which had raised features, such as the raised cartography of a map showing the elevation of mountains, etc. On this aspect, the witness testified on cross-examination as follows (R. 132-3):

Q. In other words, if an article had all of the characteristics of a chart, of a flat chart, except that it was in addition a three-dimensional object, the mere fact that it's three-dimensional would not take it out of the chart category, would it?—A. Yes. I believe it would be in the model category.

Q. You say there is no such thing as a three-dimensional chart?  
A. Not to my knowledge. We classified that a raised bas-relief model could be a three-dimensional chart, yes.

Defendant's second expert witness was Dr. William McNary, an associate professor of anatomy at the Boston University School of Medicine. He testified that in his opinion the imported figures are models and not charts. He stated that the lines and points on the imported articles do not alter the fact that they are models and not charts. Further, in his opinion, the imported articles are not "more than" models. He indicated that the lines were put on the figures for illustrative purposes and one would not expect to see those lines on a human being. Models, he said, do not have complete accuracy and may have something on them that does not exist in the original. In fact, the witness stated that he had seen models of human lungs upon which lines have been drawn, adding that models of hearts, skulls and other parts of the human anatomy are not necessarily true representations of the human anatomy, but are models nevertheless.

Dr. McNary did not agree with the testimony of Mr. Glickman with regard to three-dimensional charts. In Dr. McNary's opinion, any object which has a three-dimensional quality—even if not complete—would be a model and not a chart.

## II

Turning now to the legal aspects, it is fundamental that tariff terms are to be construed in accordance with their common meaning. It is equally fundamental that common meaning is a question of law to be determined by the court and that in determining common meaning, the court may consult dictionaries, lexicons, the testimony of record, and other reliable sources of information as an aid to its knowledge. See, e.g., Sturm, *A Manual of Customs Law* (1974), pp. 204-6.

Applying these principles, the record is persuasive in establishing that the importations are commonly known as "models." For one thing, the advertisements, catalogues, manuals and trade literature covering the importations consistently refer to them as "models." For another, the exporters and Neiman-Marcus which retailed the importations to the general public also referred to them as "models."

Beyond that, the imported merchandise is included within the dictionary definition of the term "model." Thus, *Webster's Third New International Dictionary* (1963) defines a model as follows:

\* \* \* 6a. a usu. miniature *three-dimensional representation* of something existing in nature or constructed or to be constructed.  
 \* \* \* b. a *representation* in relief or three-dimensions \* \* \*  
 [Italic added.]

Persuasive also is the expert opinion of the government's two witnesses who agreed that the importations are commonly known as models and not charts. This opinion was buttressed by the numerous catalogue exhibits of companies selling anatomical or biological

models, which exhibits invariably referred to three-dimensional articles as models and to two-dimensional articles as charts.

Nor can we agree with plaintiff's contention that the importations are "more than" models. In this connection, plaintiff asserts that the imported articles are used to "convey information" and to do so the manual is a necessary adjunct to the intended use of the imported figures. Thus, plaintiff insists that the use of the merchandise as a guide in locating the acupuncture points on the human body makes it more than a model.

However, item 737.15 is an *eo nomine* provision and not a use provision. E.g., *Arthur R. Savers v. United States*, 60 Cust. Ct. 593 C.D. 3467, 285 F. Supp. 852 (1968). Moreover, there is nothing about the use of the merchandise which would make it either "more than" a model or "other than" a model. The expert testimony has shown that (1) it is chiefly the dimensional quality of an article which distinguishes between models and charts; (2) the lines on a model in no way change the characteristics of the merchandise from a model to a chart; (3) anatomical models with lines on them are quite common; (4) models do not have to have complete accuracy with the object being represented; and (5) models and charts are frequently used for the same purpose (e.g., to show the flow of blood). Thus, the fact that the importations have lines and points on them does not cause the merchandise to be "more than" or "other than" a model.

To like effect, it must be concluded that the manual which is imported and used with the imported figures does not preclude the merchandise from being classified as a model. Plaintiff contends that the use of the manual as a reference source is similar to that of reference key codes or cards used with marine charts in marine navigation and in that way attempts to support its contention that the importation is a "chart." However, the record contains numerous examples of similar key codes, manuals or cards being used as a reference source with anatomical models. Indeed, even plaintiff's expert witness Mr. Hardy acknowledged that the "Torso Model" manufactured by his company was a model notwithstanding that it came with a 56-page manual. In short, the use of a reference manual in conjunction with the importation is not a distinguished factor which would render the articles either charts or models.

Furthermore, plaintiff did not separately invoice the manual, nor does it claim that the manual is separately classifiable. The use of the imported manual is clearly subordinate to the function of the model and is reminiscent of an instruction or operational manual accompanying many products. In any event, plaintiff's argument would, at best, merely require the manual to be separately classifiable. Plaintiff has made no such claim and the classification of the manual in no way affects the classification of a three-dimensional model.

Finally, on this point, it is to be noted that if we were to follow plaintiff's reasoning and find that the manual renders the importation "more than" a *model*, we would similarly have to find that the importation is "more than" a *chart*, thus defeating plaintiff's affirmative claim. Cf. *Trans-Atlantic Co. v. United States*, 60 CCPA 100, 103, C.A.D. 1088, 471 F. 2d 1397, 1399 (1973).

Plaintiff next argues that the model provisions are limited to models of *inanimate* objects. The argument is without merit. The previously cited dictionary definition refers to models as being representative of "something existing in nature," under which animate objects would obviously be included. So too, in the recent decision in *Lohzin & Born, Inc. v. United States*, 79 Cust. Ct. 34, 41, C.D. 4710 (1977), the court found that the term "model" as it is used in the tariff schedules would include a miniature representation of a thing which "need not be an exact or accurate representation of something in existence; it is sufficient if it is more than a crude form of a class of articles and recognizably represents an article that existed in fact or legend."<sup>4</sup> There can be no doubt that such definition includes models of animate as well as inanimate objects.

Nor do we find any merit to plaintiff's reliance on the theory of *eiusdem generis* in this regard. First, the common meaning of the term "model" can be ascertained without resorting to this rule. For it is well settled that this rule may not be invoked to narrow, limit or circumscribe an enactment and it is never applied if the intention of the legislature can be ascertained without resort thereto. See *Sandoz Chemical Works, Inc. v. United States*, 50 CCPA 31, 35, C.A.D. 815 (1963). Secondly, the rule is not applicable and certainly would not limit the scope of item 737.15 to models or model articles of inanimate objects. While plaintiff points out that items 737.05 through 737.15 "appear to consist of inanimate objects," it nonetheless offers no authority for its contention that Congress intended to limit item 737.15 to models of inanimate objects. In fact, if this court were to adopt plaintiff's limited construction of the model provision, it would also preclude the classification of imported models similar to a host of anatomical and biological models depicted in the trade catalogues as models. This is exactly the type of arbitrary distinction sought to be eliminated by the tariff schedules. Finally, the plain language of item 737.15 fails to indicate any Congressional intent to distinguish between models of animate and inanimate objects. As the court said in

<sup>4</sup> We reject plaintiff's contention that a model must consist of merchandise used for the making or building of something. This contention is based upon the decision in *United States v. American Brown Boveri Electric Corp.*, 17 CCPA 329, T.D. 43776 (1929). Plaintiff ignores the fact that this decision interpreted a *use* provision for a particular type of model under paragraph 1620 of the Tariff Act of 1922. The TSUS not only broadened the tariff classification for models but also provided *eo nomine* for models. There is no statutory basis for plaintiff's claim that item 737.15, TSUS, is limited to only models used for the making or building of something. (See, e.g., *Lohzin & Born, supra*, which involved preassembled decorative sailing ship models.)

*Hudson Shipping Co., Inc. v. United States*, 75 Cust. Ct. 26, 34, C.D. 4606 (1975), "it is apparent that item 737.15 \* \* \* makes no distinction as to the types of models \* \* \* but encompasses *all* models \* \* \* (not otherwise specifically provided for) \* \* \*." [Italic added.]

### III

Not only has plaintiff failed to demonstrate that the government's classification of the importations under item 737.15 as models is incorrect, plaintiff has also failed to prove its affirmative claim that the importations are properly classifiable under item 273.35 as charts. The latter provision, it is to be noted, is limited by headnote 1, schedule 2, part 5, which (as previously indicated) provides as follows:

1. Except for decalcomanias, labels, flaps, and bands, all of which are covered by the provisions therefor in this part, regardless of the nature of the printing thereon, *this part covers only printed matter consisting essentially of textual or pictorial matter produced by any printing process* and similar matter in manuscript or typewritten form. The text may be set forth in any language by means of any kind of characters. With the exceptions above indicated, *this part does not cover any article in which printing is merely incidental to the primary use of the article or in which printing is employed mainly for coloration or to produce a decorative or novelty effect* (see part 4 of this schedule). [Italic added.]

In view of this headnote, plaintiff's claim for classification under item 273.35 as charts must be rejected for the reason without more that it failed to present any probative evidence that the imported merchandise was *printed* matter consisting essentially of textual or pictorial matter produced by a printing process.

Mr. Glickman provided the only credible testimony of record on the question whether this merchandise was produced by any printing process. The witness testified that the meridian lines on the figures were *hand drawn*. Thus, plaintiff has failed entirely to meet its burden of proving that the merchandise was produced by a printing process.

Finally, plaintiff contends that the three-dimensional quality of the importations does not prevent them from being charts. In support of this contention, it relies on *United States v. Buffalo Society of Natural Sciences*, 15 Ct. Cust. Appls. 1, T.D. 42128, 51 Treas. Dec. 535 (1927) and *University of North Carolina v. United States*, 63 Treas. Dec. 1072, T.D. 46462 (1933). The *Buffalo* case involved models of plants and animals. The *University of North Carolina* case involved a globe of the world. In each case, the models were held to be classifiable as charts under paragraph 1530 of the Tariff Act of 1922, which provided that:

Any society or institution incorporated or established solely for religious, philosophical, educational, scientific, or literary purposes, or for the encouragement of the fine arts, or any col-

lege, academy, school, or seminary of learning in the United States, or any State or public library, may import free of duty any book, map, music, engraving, photograph, etching, lithographic print, or chart, for its own use or for the encouragement of the fine arts, and not for sale, under such rules and regulations as the Secretary of the Treasury may prescribe.

A plain reading of the decisions in *Buffalo* and *University of North Carolina* reveals that they rest solely upon the public policy behind the then paragraph 1530 of the Tariff Act of 1922. As the court stated in *Buffalo*, 15 Ct. Cust. Appls. at 4:

Paragraph 1530 obviously was intended to extend the benefits and advantages of free entry to goods intended, *inter alia*, for educational purposes. In so doing, the Congress had in mind the public welfare. It is our duty to give this paragraph a liberal construction in order to further that purpose. \* \* \*

These cases are clearly distinguishable from the present case for several reasons: First, in both the cited cases, the goods were imported by an institution incorporated solely for educational purposes, and the goods were imported only for the use of the institution. In the present case, by contrast, the merchandise was imported specifically for sales purposes and was not used solely for educational purposes. Thus, the public policy considerations applicable in the cited cases are entirely inapplicable here. Second, at the time both cited cases were decided there were no specific provisions for models such as contained in item 737.15, and neither case involved competing provisions for models and charts.

For all the foregoing reasons, plaintiff's claim is overruled and judgment will be entered dismissing the action.



# Decisions of the United States Customs Court

## *Abstracts Abstracted Protest Decisions*

DEPARTMENT OF THE TREASURY, September 5, 1978.

The following abstracts of decisions of the United States Customs Court at New York are published for the information and guidance of officers of the customs and others concerned. Although the decisions are not of sufficient general interest to print in full, the summary herein given will be of assistance to customs officials in easily locating cases and tracing important facts.

ROBERT E. CHASEN,  
*Commissioner of Customs.*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	ASSESSED		HELD		BASIS	PORT OF ENTRY AND MERCHANDISE
				Par. or Item No. and Rate		Par. or Item No. and Rate			
P78/100	Re, C. J. August 28, 1978	Olympic Ltd.	75-4-00964	Item 685.30 6.5%		Item 678.50 8%		Judgment on the pleadings Montgomery Ward & Co. v. U.S. (C.D. 4573)	New York Compact radio phono 8- track tape player with two speakers



P78/101	Lands, J. August 28, 1978	International Seaway Trading Corp. et al.	66/39456, etc.	Par. 216 15%	Par. 1558 8.5%	Sumitomo Shoji New York, Inc. v. U.S. (C.D. 4395, and C.A.D. 1169)	New York Synthetic rubber boots, overshoes, etc.
P78/102	Rao, J. August 29, 1978	Sterling Novelty Prod- ucts d/o Glovemakers	75-5-01377	Item 706.60 20%	Item 774.60 8.5%	Adolco Trading Co. et al. v. U.S. (C.D. 4487)	New York Plastic shopping bags
P78/103	Watson, J. August 29, 1978	Dresser Industries, Inc., Dresser Atlas Division	76-6-01445	Item 711.86 25%	Item 722.16 7.5%	Agreed statement of facts	Houston "Imacon" high-speed cam- era

# Decisions of the United States Customs Court

## *Abstracts* *Abstracted Reappraisal Decisions*

DECISION NUMBER	JUDGE & DATE OF DECISION	PLAINTIFF	COURT NO.	BASIS OF VALUATION	HELD VALUE	BASIS	PORT OF ENTRY AND MERCHANDISE
R78/174	Watson, J. August 28, 1978	Kanematsu-Gosho (USA), Inc., et al.	R68/14602, etc.	Cost of production	Invoiced unit prices, f.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4024)	Boston Lathes and accessories
R78/175	Re, C. J. August 29, 1978	Matsushita Electric Corp. of America	77-0-02853	Export value	\$25.00 per unit, net, packed	Agreed statement of facts	New York Panasonic Brand Cassette Car Stereo Tape Player CX-233EU
R78/176	Rao, J. August 29, 1978	Lone Star Finance Corporation	R62/6450	Cost of production	DM\$339.00	U.S. v. F & D Trading Corp. (C.A.D. 1080)	Houston Volkswagen automobiles

R78/177	Rao, J. August 29, 1978	Egon S. Oppenheim	R65/9363	Cost of production	DM3372.00	U.S. v. F & D (Trading Corp. (C.A.D. 1089)	New Orleans Volkswagen automobiles
R78/178	Rao, J. August 29, 1978	Usico Imports, Inc.	R65/11385	Cost of production	DM3383.00	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Jacksonville (Tampa) Volkswagen automobiles
R78/179	Re, C. J. August 30, 1978	Chadwick-Miller, Inc.	R70/6878, etc.	Export value	Invoice ex-factory value exclusive of invoiced amounts for buying commissions, and inland freight and shipping charges	Chadwick-Miller Importers, Inc., et al. v. U.S. (R.D. 11743)	Los Angeles Sundry items
R78/180	Rao, J. August 30, 1978	Usico Imports, Inc.	R67/16982, etc.	Cost of production	As specified in column designated "Claimed Value" on schedule attached to decision and judgment	U.S. v. F & D Trading Corp. (C.A.D. 1089)	Charleston Volkswagen automobiles
R78/181	Watson, J. August 30, 1978	Kanematsu New York, Inc., et al.	R68/4450, * etc.	Cost of production	Invoiced unit prices, L.o.b. Japan	Given International, Inc. v. U.S. (C.D. 4624)	Houston Lathes and accessories

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        Schedule 2, part 5, headnote 1, C.D. 4763

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    "More than" doctrine not applicable, C.D. 4763

    "More than" doctrine not applicable; model, C.D. 4763

Other models; acupuncture dolls (models), C.D. 4763

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